

**HIGH COURT OF UTTARANCHAL AT
NAINITAL.**

Writ Petition No. 1095 of (S/S) 2003

Sher Singh Thapa,
Aged about 21 years,
Son of late Sri Aan Singh Thapa,
resident of village – Mandal Shera,
patti – Duga,
Tehsil & District – Bageshwar.

.....Petitioner.

versus

1. State of Uttaranchal through Principal Secretary, Department of Revenue, Government of Uttaranchal, Dehradun.
2. Commissioner, Kumaon Mandal, Nainital.
3. District Magistrate, Almora.

....Respondents.

Sri C.D. Bahuguna, learned counsel for the petitioner.
Learned Standing counsel for the respondents.

Hon'ble M.M. Ghildiyal, J.:

Heard Sri C.D. Bahuguna, learned counsel for the petitioner and learned Standing Counsel for the respondents.

By means of this writ petition, the petitioner has prayed to issue a writ in the nature of Mandamus directing the respondents to consider the petitioner for appointment under Dying in Harness Rules on Class IV post in the office of respondent nos. 2 or 3.

The contention of the petitioner is that his father late Sri Aan Singh Thapa was working on the post of Driver in the office of Sub Divisional Magistrate. While in service Sri Aan Singh Thapa died on 12.01.1995 leaving behind his widow and four children. Petitioner is the eldest son of the deceased Sri Aan Singh Thapa and at the time of death, he was minor. The family of

the deceased has no meaning of their livelihood. In July 2000, the petitioner became major and has moved an application on 18.7.2000 before the District Magistrate, Almora for appointment under Dying in Harness Rules on any class IV post. Since the application moved by the petitioner, was beyond time and it was time barred by six months, the District Magistrate, Almora referred the matter vide letter dated 04.09.2000 to the State Government to accord sanction to the petitioner for relaxation in applying to Class IV post under Dying in Harness Rules. The District Magistrate, Almora by its letter dated 30.11.2000 informed the petitioner that his matter has already been referred to State Government. However, the State Government has not passed any order in respect of relaxation of time for applying.

Consequently, again on 15.9.2001, petitioner moved an application to the Secretary, Revenue Department, Government of Uttarakhand, Dehradun with reference to the letter of District Magistrate dated 4.9.2000 to provide relaxation for applying under Dying in Harness Rules.

Again on 7.1.2002, petitioner moved an application before District Magistrate, Almora but no action has been taken by the State Government.

On 24.8.2002, District Magistrate, Almora, again wrote a letter to Additional Secretary, Government of Uttarakhand, Dehradun to take decision on the matter. However, no action has been taken by the State Government till date.

Petitioner was constrained to file the writ petition in this court and this court passed an order on 23.9.2003 that the case of the petitioner shall be considered by the respondents for appointment under Dying in Harness Rules. After passing this order

District Magistrate, Almora again requested the State Government to take decision in the petitioner's matter vide letter dated 18.11.2003. However, no action has been taken by the State Government.

Respondent no. 3 has filed counter affidavit. Respondent no. 3 has stated in his counter affidavit that he has already wrote letter to State Government to consider the matter of the petitioner for relaxation and now it for the State Government to pass appropriate order.

Though the State Government was also party in the present writ petition but no counter affidavit has been filed by the State Government.

In view of the facts and circumstances stated above, the State Government is directed to pass an appropriate order in reference to the letters sent by the District magistrate, Almora dated 4.9.2000 24.8.2002 and 18.11.2003. Respondent no. 1 shall take decision within a period of six weeks from the date of production of certified copy of this order.

With this direction the writ petition is finally disposed of.

(M.M. Ghildiyal, J.)

February 18, 2005

SKS